

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Applicant: James L. Martin, Jr.	§	CUSTOMER NO.: 29855
	§	
Serial No.: 09/413,105	§	Docket No.: 99-008-02-US
	§	(149-0031US)
	§	
Filed: 6 October 1999	§	Art Unit: 2771
	§	
For: Sequential Unload Processing	§	
of IMS Databases	§	
	§	Confirmation No.: 1590
	§	Examiner: Vincent F. Boccio

PETITION FOR RECONSIDERATION OF PATENT TERM

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicant hereby submits this request for reconsideration of the Patent Term under the authority of the Commissioner under 37 C.F.R. § 1.182 regarding the above-referenced matter.

A Determination of Patent Term Extension mailed 14 December 2009 states that the total Patent Term Extension 0 days. Applicant respectfully submits that the correct Patent Term Adjustment/Extension is 2,858 days, on the basis of the USPTO's delay caused by effectively loosing the application from 27 March 2001 through 22 January 2009.

The calculated Patent Term Extension under 35 U.S.C. 154(b) appears manifestly unfair to Applicant for the following reasons:

Applicant filed the application on 6 October 1999;

A Non-Final Rejection was mailed to Applicant on 22 October 2001;

Applicant timely filed a proper Response to the Non-Final Office Action on 27
December 2001;

A Notice of Abandonment was mailed to Applicant on 6 May 2002;
Applicant responded to the Notice of Abandonment on 15 May 2002;
Applicant filed a Status Inquiry on 20 December 2004;
Applicants Petition to vacate Abandonment was GRANTED 2 November 2007;
Applicant filed a second Status Inquiry on 23 July 2008;
A second Non-Final Office Action was mailed to Applicant on 22 January 2009;
Applicant timely filed a proper response on 17 April 2009;
A third Non-Final Office Action was mailed to Applicant on 7 July 2009;
Applicant timely filed a proper response on 29 September 2009;
A Notice of Allowance was mailed 14 December 2009.

Applicant respectfully submits that there were no circumstances constituting a failure to engage in reasonable efforts to conclude processing or examination that are attributable to Applicant. Delays in this case from 27 March 2001 (4 months after timely filed Response to first Office Action) through 22 January 2009 are entirely the fault of the PTO. It appears to Applicant that the PTO lost this case at least two (2) times which resulted in several years delay in processing. At no time did Applicant fail to timely reply or file an improper response. Because Applicant is clearly not at fault for any delays in processing this Application, Applicant respectfully requests the Commissioner to properly adjust the patent term of this issued Patent. Applicant further requests the Examiner make a determination prior to the required filing of Issue Fees which are due 15 March 2010 such that the face of the Issued Patent will properly reflect the adjustment. However, if no determination can be made by that date, Applicant respectfully requests the Commissioner Issue a Certificate of Correction for this case.

Applicants attach as Exhibit A a copy of the PAIR record from 23 December and as Exhibit B a copy of the granted Petition to vacate Abandonment which acknowledges the Office did in fact receive a timely response to the first Non-Final Office Action.

For each of the reasons stated above, Applicant believes the time from 27 March 2001 through 22 January 2009 (mail date of second Non-Final Office Action) cannot reasonably be attributed to Applicant. This delay of 2,858 days reflects delay properly

attributable to the PTO because of the failure to timely provide Applicant with a second Office Action.

The fee for request for a Petition under 37 C.F.R. § 1.182 is filed herewith. Applicant believes no other fees are due. However please charge any other requisite fees in this matter, to Deposit Account No. 501922, referencing attorney docket no.149-0031US. Please credit any overpayments to the same account.

If there are any questions or issues that can be resolved via telephone, the Examiner is requested to contact the undersigned attorney at 832-446-2400.

Respectfully submitted,

Date: 28 December 2009

/William M. Hubbard/
William M. Hubbard, J.D.
Reg. No. 58,935
Wong, Cabello, Lutsch,
Rutherford & Brucculeri, L.L.P.
20333 SH 249, Suite 600
Houston, Texas 77070

Exhibit A

09/413,105 SEQUENTIAL UNLOAD PROCESSING OF IMS DATABASES 12-23-2009::13:50:07

Patent Term Extensions

Patent Term Extension (PTE) for Application Number: 09/413,105

Explanation Of Calculations

Filing or 371(c) Date:	10-06-1999	USPTO Delay (PTO) Delay (days):	0
USPTO Adjustment (days):	+0	Corrections (APPL) Delay (days):	0
		Total PTE (days):	0

Patent Term Extension History

Date	Contents Description	PTO(Days)	APPL(Days)
12-14-2009	Mail Notice of Allowance		
12-08-2009	Document Verification		
12-08-2009	Notice of Allowance Data Verification Completed		
12-08-2009	Case Docketed to Examiner in GAU		
12-03-2009	Examiner Interview Summary Record (PTOL - 413)		
12-07-2009	Examiner's Amendment Communication		
10-24-2009	Date Forwarded to Examiner		
09-29-2009	Response after Non-Final Action		
07-07-2009	Mail Non-Final Rejection		
07-06-2009	Non-Final Rejection		
04-21-2009	Date Forwarded to Examiner		
04-17-2009	Response after Non-Final Action		
03-31-2009	Case Docketed to Examiner in GAU		
01-22-2009	Mail Non-Final Rejection		
01-21-2009	Non-Final Rejection		
05-28-2002	New or Additional Drawing Filed		
11-06-2008	Date Forwarded to Examiner		
05-28-2002	Response after Non-Final Action		
11-06-2008	Mail Notice of Rescinded Abandonment		
11-06-2008	Notice of Rescinded Abandonment in TCs		
09-11-2008	Case Docketed to Examiner in GAU		
09-03-2008	Case Docketed to Examiner in GAU		
11-02-2007	Mail-Petition to Revive Application - Granted		
11-02-2007	Petition to Revive Application - Granted		
05-28-2002	Petition Entered		
05-25-2007	File Marked Found		
12-20-2004	Miscellaneous Incoming Letter		
01-03-2005	File Marked Lost		
05-28-2002	Miscellaneous Incoming Letter		
05-28-2002	New or Additional Drawing Filed		
05-06-2002	Mail Abandonment for Failure to Respond to Office Action		
05-03-2002	Aband. for Failure to Respond to O. A.		
10-22-2001	Mail Non-Final Rejection		
10-19-2001	Non-Final Rejection		
10-15-2001	Case Docketed to Examiner in GAU		

02-14-2001	Case Docketed to Examiner in GAU
06-30-2000	Information Disclosure Statement (IDS) Filed
06-30-2000	Information Disclosure Statement (IDS) Filed
12-19-1999	Case Docketed to Examiner in GAU
11-01-1999	Application Dispatched from OIPE
10-27-1999	IFW Scan & PACR Auto Security Review
10-13-1999	Initial Exam Team nn

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Exhibit B



WONG, CABELLO, LUTSCH, RUTHERFORD &
BRUCCULERI, L.L.P.
20333 SH 249
SUITE 600
HOUSTON TX 77070

COPY MAILED

NOV 02 2007

OFFICE OF PETITIONS

In re Application of
James L. Martin, Jr.
Application No. 09/413,105
Filed: October 6, 1999
Attorney Docket No.: **149-0031US**

ON PETITION

This is a decision on the petition filed May 28, 2002 to withdraw the holding of abandonment for the above-identified application which is being treated under 37 CFR 1.181.

The petition under 37 CFR 1.181 is **GRANTED**.

The application was held abandoned on January 23, 2002, for failure to timely submit a timely response to the non-Final Office Action mailed October 22, 2001, which set a three month period for reply. Accordingly, a Notice of Abandonment was mailed May 6, 2002.

Petitioner asserts that a response was filed and, in support, petitioner has submitted, *inter alia*, a copy of the response in the form of an amendment with a certificate of mail date of December 27, 2001 and a post card receipt date stamped January 18, 2002 by the USPTO.

The evidence submitted corroborates a timely response to the non-Final Office Action. Accordingly, the holding of abandonment is withdrawn and the Notice of Abandonment is vacated. No petition fee is due and none has been charged.

This matter will be referred to Technology Center 2172 for appropriate action on the amendment filed January 18, 2002 (certificate of mail date December 27, 2001), a copy of which was submitted upon petition.

Telephone inquiries concerning this matter may be directed to the undersigned.
Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions